



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1791-2018 (O&M)
Date of Decision: July 17, 2024

ICICI Lombard General Insurance Company Ltd.
...Appellant

VERSUS

Smt.Dal Kaur and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajbir Singh, Advocate
for the appellant.

Mr.Ramesh Hooda, Advocate
for respondent No.1.

Respondents No.2 and 3 proceeded against ex-parte.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-insurance company, to assail the Award dated 21.02.2018 passed by learned Motor Accident Claims Tribunal, whereby, compensation was awarded, on account of death of Saminder @ Tathi, in a motor vehicular accident.

For the convenience of discussion, the parties are referred to as making appearance before learned Tribunal.

The facts germane, to be noticed are as follows:-

That, on 16.04.2016, Saminder @ Tathi along with Ravi had gone to Gohana, in the car bearing registration No.HR-99-YBT-4007, for repair of the vehicle. When they reached the area of village Khandrai, on Gohana-



Jind Road, near Khandrai turn, then, Ravi, who was driving the car in a rash and negligent manner, had lost control over the said vehicle, as a result whereof, the offending car fell into the ditches and turned turtle. As the result of the accident, Saminder @ Tathi received multiple grievous injuries. He was taken to PGIMS, Rohtak, where he succumbed to the injuries, on the same day.

It is the specific claim of the claimants that the ill-fated car was being driven by Ravi, in a rash and negligent manner. Rapat No.30 dated 17.04.2016 was entered in P.S. Sadar Gohana. Further, in the claim petition, it was asserted that the Saminder @ Tathi was 35 years old, at the time of accident. He was running a mechanic workshop at Jhajjar and his earnings were Rs.20,000/- per month. As such, the compensation was sought, on account of death of Saminder @ Tathi, in a motor vehicular accident.

In pursuance of the notice issued, respondents made appearance and filed respective replies. Respondent No.1 and 2-driver and owner of the offending car, in their reply, had denied about the accident having taken place, due to rash and negligent driving of the offending vehicle by respondent No.1. They also alleged that vehicle was insured with respondent No.3-insurance company (present appellant).

Likewise, the insurance company, in its separate reply, had resisted the claim of the claimants, while disputing the maintainability of the claim petition and also that it is the outcome of false DDR, lodged by the claimant, in connivance with respondents No.1 and 2 and the police. It was alleged that no accident has taken place, as alleged and therefore, it has no liability to pay the compensation.



Issues were framed and evidence was adduced. On appraisal of the evidence, learned Tribunal had concluded about the accident to have taken place, due to rash and negligent driving of the car bearing registration No.HR-99-YBT-4007 and the same resulted into death of Saminder @ Tathi. Furthermore, while considering the deceased to be unskilled daily wager, his earnings were taken Rs.250/- per day and considering the Notification No.IR-2/7083-7193 dated 02.03.2017, issued by the Labour Commissioner, Haryana, the wages of an unskilled labourer w.e.f. 01.01.2017 was taken as Rs.7600/- per month. Considering the same, the monthly earnings of the deceased were taken as Rs.8000/- per month, annual whereof comes to be Rs.96,000/-.

Furthermore, the deceased was considered to be 35 years old, while taking into consideration the recitals of the date of birth of the deceased as 05.03.1981, as spelt out from the matriculation certificate Ex.P5 and addition of 40% was made, on the count of 'future prospects' and thus, the annual earnings were taken as Rs.1,34,400/-. Since, the deceased was bachelor, deduction was made to the extent of 50%, on the count of 'personal expenses', as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, and thus, the earnings were taken as Rs.67,200/- per annum. After the application of multiplier of '16', the loss of dependency was worked upon as Rs.10,75,200/-. Besides the same, further amount of Rs.15,000/- was granted, on the count of 'funeral expenses' and another Rs.15,000/- was granted, on the count of 'loss of estate'. In total, the compensation awarded as Rs.11,05,200/-.

The respondents, in the capacity of being driver, owner and insurer of



the offending vehicle, were held liable to pay the compensation, jointly and severally.

Feeling aggrieved, the insurance company has filed the present appeal, while assailing the factum of the accident as well as manner of taking place of the same and also that the compensation, worked by learned Tribunal, is on higher side.

It is assiduously submitted by learned counsel for the insurance company that a false DDR was got lodged, only to seek compensation. Even though, PW-2 Kuldeep Singh, an alleged eye-witness of the accident, has been examined, but however, learned Tribunal had not considered the recitals of the DDR No.30 dated 17.04.2016, which do not speak about any negligence, on the part of the alleged driver of the offending vehicle. It is submitted that the said DDR was got lodged after one day by the uncle of the deceased, namely Bhalu Ram s/o Chandu Ram. However, therein, he had categorically stated about the accident to have taken place, due to technical fault in the car and there is no fault of anyone, in this accident. In the given circumstances, it is submitted that rashness and negligence, on the part of Ravi, as such, do not stand established. Therefore, the testimony of Kuldeep is rendered doubtful and if it is excluded, the necessary ingredients, with regard to involvement of the car and rashness and negligence, on the part of Ravi, as such, does not stand established.

Moreover, it is submitted that no FIR was got registered qua the alleged accident, which also causes doubt, about the version, so put forth by the claimants.

Besides the aforesaid, it is submitted that the earnings of the

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deceased taken as Rs.8000/- per month by learned Tribunal, is also erroneous. Reliance has been placed upon the Notification dated 02.03.2017, which is applicable w.e.f 01.01.2017. However, the accident had taken place on 16.04.2016 and therefore, the aforesaid Notification is not applicable and thus, the earnings, so taken, is on higher side. As such, a prayer has been made for acceptance of the appeal and for extensive reduction of the compensation, so worked upon.

On the contrary, learned counsel for the respondent-claimant No.1, has resisted the claim of the appellant-insurance company. In fact, it is submitted that from the clear and specific testimony of an eye-witness CW-2 Kuldeep, the very fact of accident, having taken place on account of rash and negligent driving of the car bearing registration No.HR-99-YBT-4007, stands amply established. In fact, while making reference to DDR No.30, copy whereof is Ex.P3, it is submitted that even though, the said DDR was got lodged by one Bhalu Ram, stating it to be a technical fault, which was the cause of the accident, but however, there is mention made about Kuldeep, to have witnessed the accident in question and therefore, his testimony, as such, cannot be discarded. In the light of the same, it is submitted that in his affidavit Ex.PW2, Kuldeep has categorically imputed rashness and negligence, on the part of Ravi, while driving the offending car, as a result whereof, Ravi lost control over the said car, which turned turtle and fell in the ditches. Also, he categorically stated about Saminder @ Tathi, the occupant of the said car, to have sustained serious and multiple injuries, on his body and he was taken to PGIMS, Rohtak, where, he succumbed to his injuries. Further, he had categorically stated that the



accident was caused, due to sole negligence of Ravi.

Also further, learned counsel for the claimants submits that the compensation, so worked upon by learned Tribunal, cannot be said to be on higher side. As such, a prayer has been made for dismissal of the appeal.

Undisputedly, in the case in hand, no FIR, as such, was registered, qua the accident in question. However, by the very nature of things, the FIR is only aimed at intimating of the occurrence to the police. It cannot and does not purport to be a complete encyclopedia of the attending circumstances. Otherwise also, registration of the FIR, as such, is not prerequisite to prove the accident.

Learned counsel for the appellant has though placed reliance upon Ex.P3, which is DDR got lodged, at the instance of Bhalu Ram s/o Chandu Ram, uncle of the deceased Saminder @ Tathi, wherein, he had stated about the driver of the car in question, to have lost control over the car, on account of technical fault, but however, this DDR has to be appraised, in the light of the other evidence, coming on record. It should be noted that the best person, who could have deposed about the manner of taking place of the accident, is the driver of the offending car i.e. Ravi. However, he had not stepped into the witness box. Though, Ravi had filed the written statement together with owner of the car, but both owner as well as the driver, did not have the cheeks to step into the witness box, to depose about the manner of taking place of the accident.

Even, Bhalu Ram has not been examined. May it be so, that Bhalu Ram was not examined by the claimants, but however, if the contesting respondents, had to dispute the manner of taking place of the accident, they

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were having the option to summon Bhalu Ram, as a witness, but however, no steps have been taken. Even if the DDR in question, is taken into account, it is evident that one person by the name of Kuldeep had reached the spot and he had witnessed the accident and he had also taken the deceased to PGIMS, Rohtak.

As such, in the given circumstances, Kuldeep's testimony, as an eye-witness, gains weight. Said Kuldeep had stepped into witness box as PW-2. In his affidavit Ex.PW2, he has categorically stated about being present near to the spot of accident on 16.04.2016 and he categorically stated at about 6.30 p.m., car bearing No.HR-99-YBT-4007, being driven by respondent-Ravi, in a rash and negligent manner, when it came from the side of Jind, at a high speed and due to high speed, Ravi lost his control over the above-said car, as a result whereof, the car turned turtle and fell in the ditches. He also categorically stated that Saminder @ Tathi was sitting in the said car and he had sustained serious multiple injuries, on his body. He also further deposed that Ravi and Saminder @ Tathi were taken to PGIMS, Rohtak, by him, where Saminder @ Tathi succumbed to his injuries. He further categorically imputed that the accident was caused, due to sole negligence on the part of respondent-Ravi, while driving the car in question.

Very true, the said witness had stated that he had not got recorded the statement to the police, about taking place of the accident, as deposed, but however, it matters not much, as his presence, otherwise is spelt out from the DDR, upon which, the reliance was placed by learned counsel for the appellant.

Also, learned counsel for the appellant submits that another



DDR was also got lodged, at the instance of Ravi, copy whereof Ex.PW3/A, wherein, he had stated about the accident to have not been caused, due to his rash and negligent driving. May it be so. The recitals of this DDR, as such, cannot ipso facto, be considered. This is self-serving version, given by Ravi, who did not had the cheeks to step into witness box and face cross-examination, vis-a-vis, manner of the accident. Looking at his conduct, adverse inference ought to be drawn and therefore, no sustenance can be drawn from the said DDR.

Thus, considering the testimony of Kuldeep, coupled with testimony of Dal Kaur, mother of the deceased, it stands amply established that the accident had taken place, due to rash and negligent driving of Ravi, which resulted into causing multiple injuries on the person of Saminder @ Tathi, the occupant of the car, which proved fatal. Thus, the finding of learned Tribunal, on issue No.1 are hereby affirmed.

Faced with the aforesaid conclusion, much emphasis has been laid upon the compensation, so worked upon by learned Tribunal. Though, it is pleaded that the earnings have been taken on higher side, but however, the submission, so made, is not tenable. Undisputedly, learned Tribunal had considered the Notification No.IR-2/7083-7193 dated 02.03.2017, but however, the accident had taken place on 16.04.2016. Even if, it has been so taken, on the basis of the aforesaid Notification, even then, the amount of monthly earnings taken by learned Tribunal, cannot be said to be on higher side. The deceased is stated to be indulging in the mechanic workshop. The National Trade Certificate of the deceased is Ex.P4. Even, the matriculation certificate of the deceased is Ex.P5, which clearly reveals that he was



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matriculate.

Considering the deceased to be matriculate at that time and also having completed the course of training at Industrial Training Institute, Nathusari Chopta (Sirsa) and passed the Trade Test of Welder (Gas & Electric), he cannot, in any manner, be considered as unskilled labourer.

Thus, considering the aforesaid qualification of the deceased, the earnings taken as Rs.8000/- per month, is just and reasonable. Considering it to be so, the consequential work on of the compensation, is in accord with the settled law. Hence, the compensation awarded, do not call for any reduction.

In the light of the aforesaid observations, the impugned Award brooks no interference. Hence, the present appeal is hereby dismissed.

July 17, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No